

Notice of Allowability

Application No.

08/973,416

Examiner

Kevin R Kruer

Applicant(s)

HARA ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 11/15/2004.
2. ☒ The allowed claim(s) is/are 24-31.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 12/10/2004.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Mukai on Friday, December 10, 2004.

The application has been amended as follows:

The abstract has been deleted and the following abstract has been inserted in place thereof:

- -A pellet to be used in a multi-layer laminate for storing liquid foods, comprising a hydrophilic reducing organic compound and a hydrophilic and water insoluble thermoplastic resin, wherein the hydrophilic reducing organic compound is kneaded with the hydrophilic and water insoluble thermoplastic resin. The kneaded compound comprised of the hydrophilic reducing organic compound and the hydrophilic and water insoluble thermoplastic resin is then kneaded with a hydrophobic thermoplastic resin and formed into a pellet. The pellet is such that 50 grams of the pellet when stored at 15°C for one week in a sealed 180ml container requires the presence of water in order to absorb oxygen.- -

In line 15 of claim 24, the word "the" before the phrase "hydrophobic thermoplastic resin" has been deleted, and the word - - a- - has been inserted in place thereof.

In the last line of claim 24, one of the two periods has been deleted.

In line 16 of claim 29, the word "the" before the phrase "hydrophobic thermoplastic resin" has been deleted, and the word - - a - - has been inserted in place thereof.

Response to Amendment

The examiner notes that the claims have been amended to read "wherein 50 grams of pellet when stored at 15°C for one week in a sealed container requires the presence of water in order to absorb oxygen." Said amendment finds support on page 16 (lines 3-5), Table 1, and page 17 (lines 15-22) of the specification. Specifically, Table 1 demonstrates that the claimed pellet will absorb oxygen in the presence of water (embodiments 1-4) after 1 week but does not absorb oxygen after one week in the absence of water (reference examples 1-4).

PTO-892

The PTO-892 provided herein is to make of record references that were previously considered but inadvertently omitted from previous PTO-892s. Specifically, the Japanese documents are the references cited on the international search report. US 5,639,815 is herein considered to be an English equivalent of Japanese document 02-500846 cited on the search report.

The examiner further notes that the Daiichi Seiyaku Co reference cited in previous Office Actions is the same document as JP-56096686A cited in the PTO-892 of Paper No. 4. A copy of the Derwent abstract of JP-56096686A is enclosed herein because said abstract has not previously been scanned into the file.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Claims 24-31 are allowable over the prior art.

The closest prior art is Koyama et al (US 5,663,223). Koyama teaches a pelletized (see example 1) composition comprising polyvinyl alcohol, olefin resin (claim 1), and an oxygen-absorbing agent (col 6, lines 18+). The polyvinyl alcohol, olefin resin, and absorbing agent are mixed, and the resulting mixture is pelletized (example 1). The pellet of Koyama fails to anticipate or render obvious the claimed pellet because said pellet does not require the presence of water in order to absorb oxygen when 50 grams of the pellet are stored at 15°C for one week in a sealed 180ml container. As noted by Applicant on page 6 of the response entered 11/15/2004, Table 1 of the specification shows that the claimed pellet absorbs a substantial amount of oxygen after one week when stored in the presence of distilled water under the claimed conditions (embodiments 1-4), but that no oxygen is absorb after one week when stored under identical conditions with the exception that no distilled water is present (reference examples 1-4). In contrast, the pellet of Koyama will absorb oxygen in the presence or absence of water. As shown in the Declaration under 37 CFR 1.132 submitted on May 16, 2001, when the pellets are prepared by kneading all the compounds together as taught in Koyama, the pellet will absorb water even in the absence of water.

The prior art thus fails to teach the claimed pellet comprising a hydrophilic reducing organic compound, a hydrophilic and water insoluble thermoplastic resin, and a hydrophobic thermoplastic resin wherein "50 grams of the pellet when stored at 15°C

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for one week in a sealed 180ml container requires the presence of water in order to absorb oxygen." Furthermore, the prior art fails to render the claimed product obvious.

Conclusion

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 571-272-1535. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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